IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2051 of 2006
[LEAVE TO APPEAL]
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra. ..Applicant.
Versus
Prakash Purushottam Deo. ..Respondent.

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Mrs.A.S.Pai, APP, for the Applicant-State.
Mr.N.R.Bubna, Adv. for the Respondent.

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CORAM : SMT.V.K.TAHILRAMANI,J.
DATED : NOVEMBER 30, 2007.

P.C.:

1. Heard.

2. The applicant-State of Maharashtra has challenged the judgment and order dated 17.1.2006 passed by the learned JMFC, Court No.9, Pune in Cri.Case No.197 of 2004. By the said judgment and order the learned Magistrate acquitted the respondent-accused of the offence punishable under Sections 279, 338 of IPC and 119/177 of the Motor Vehicles Act.

3. I have perused the judgment and order dated 17.1.2006 as well as the evidence which has been produced by the learned APP. After going through

the same, it is seen that the view taken by the learned Magistrate is a reasonable and possible view.

4. The prosecution case is that the respondent-accused was driving his Maruti car bearing No.MH-12/W-8396 in rash and negligent manner and he gave dash with his car to the scooty on which PW-2 Jostna Sale and PW-3 Anjali Sale were riding. PW-2 and PW-3 have been examined. Both the witnesses were unable to give the number of the vehicle or any details relating to the vehicle nor they were able to identify the respondent-accused as being the driver of the vehicle in question. No doubt PW-4 Arjun Rajaguru, who is known to the family of PW-2 & PW-3, has stated that it was the respondent who was driving the vehicle in question and he gave dash with the said vehicle to the scooty on which PW-2 & PW-3 were riding. However, this witness does not say that the respondent was driving the car in rash and negligent manner nor have PW-2 & PW-3 stated that the vehicle which gave dash was being driven in rash and negligent manner. From the evidence of PW-2 it is seen that when she came

out of the colony she took left turn by crossing road and thereafter she took right turn and that is when the incident occurred. However, the evidence on record does not show the direction of the spot. It is not clear where the gate of the colony is situated. No directions are mentioned by any of the witnesses. So also no directions are mentioned in the spot panchnama. Hence it is not possible to gather from the evidence, the spot at which PW-2 came out of the colony with her scooty and thereafter at what spot she took the left turn and thereafter slight right turn. The evidence of the witnesses and the spot panchnama are vague and they do not give the exact idea of the spot. Hence, it is not possible to gather as to why it was necessary for PW-2 to take left turn by crossing the road and thereafter to take right turn. Moreover there are improvements in the versions of PW-2 & PW-3 whereby they have added that they have crossed the road and thereafter the incident occurred.

5. Looking to the evidence on record, the learned Magistrate has held that it was not possible to positively arrive at the conclusion

that the incident occurred due to rash or negligent driving by the accused only.

6. Looking to the above facts, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

7. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view hence, no interference is called for.

Application for leave to appeal is rejected. Consequently, Appeal also stands dismissed.

(SMT.V.K.TAHILRAMANI,J.)